

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LEONARD SALESKY,

Petitioner,

v.

WILLIE BONDS, et al.,

Respondents.

HONORABLE JEROME B. SIMANDLE

Civil Action
No. 15-8221 (JBS)

MEMORANDUM OPINION

SIMANDLE, Chief Judge:

Petitioner is proceeding pro se with a Second Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Docket Entry 1).

1. On November 20, 2015, Petitioner filed a second petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this Court. *Salesky v. Bonds*, No. 15-8221 (D.N.J. filed Nov. 20, 2015).

2. Subsequent to the filing of his habeas petition in this Court, Petitioner filed a motion before the Third Circuit requesting permission to file a second or successive § 2254 petition. *In re Leonard Salesky*, No. 15-3922 (3d Cir. filed Dec. 9, 2015).

3. As Petitioner's motion was pending before the Third Circuit, this Court administratively terminated the petition on January 6, 2016. (Docket Entry 4).

4. On January 22, 2016, the Third Circuit denied Petitioner's motion. *In re Leonard Salesky*, No. 15-3922 (3d Cir. Jan. 22, 2016) (order denying motion); (Docket Entry 5).

5. On February 3, 2016, Petitioner submitted the Third Circuit's order to this Court along with a request for the return of his filing fee. (Docket Entry 5).

6. District Courts may not consider a second or successive § 2254 petition without permission from appropriate court of appeals. 28 U.S.C. § 2244(b)(3)(A). As the Third Circuit has denied Petitioner permission to proceed on his second or successive petition, this Court lacks jurisdiction over the petition. The petition is therefore dismissed with prejudice.

7. Petitioner is not entitled to the return of his filing fee. Petitioner elected to file in this Court before receiving permission to proceed from the Third Circuit. The fact that this Court does not have jurisdiction to consider the petition does not negate the fact that it was indeed filed with the Clerk. *See* 28 U.S.C. § 1914; *Pearson v. Prison Health Serv.*, 519 F. App'x 79, 85 n.3 (3d Cir. 2013) ("[A]ppeal and docketing fees may not be refunded." (citing *Porter v. Dep't of Treasury*, 564 F.3d 176 (3d Cir. 2009))).

8. An appropriate order follows.

February 5, 2016
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
Chief U.S. District Judge